

# IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

**Simon Chikhladze,**

Plaintiff,

v.

**Shannon Behaj (a.k.a. Shannon D. Behaj, Shannon Behaj Dolan, Shannon Dolan),** in her official capacity as a U.S. Consular Officer, Defendant.

Case No.

## COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

### I. INTRODUCTION

1. This action arises under the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701–706, and challenges the denial of Plaintiff’s visa application under Section 214(b) of the Immigration and Nationality Act (“INA”).
2. Plaintiff alleges that the denial was arbitrary, capricious, and not in accordance with law because the decision failed to consider material facts directly relevant to the statutory determination. See *Motor Vehicle Manufacturers Association v. State Farm Mutual Automobile Insurance Co.* (agency must consider relevant factors and articulate rational connection between facts and decision).
3. Plaintiff seeks limited relief: vacatur of the denial and remand for reconsideration based on the full administrative record.

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### II. JURISDICTION AND VENUE

4. This Court has jurisdiction under 28 U.S.C. § 1331.
  5. The APA waives sovereign immunity for non-monetary claims. 5 U.S.C. § 702.
  6. This Court has authority to compel agency action unlawfully withheld under 28 U.S.C. § 1361.
  7. Plaintiff challenges final agency action for which there is no adequate alternative remedy. See *Heckler v. Ringer*.
  8. Venue is proper under 28 U.S.C. § 1391(e).
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### III. PARTIES

9. Plaintiff Simon Chikhladze is a natural person residing in Tbilisi, Georgia.
  10. Defendant Shannon Behaj is, on information and belief, a U.S. Foreign Service officer and was assigned to the U.S. Embassy in Tbilisi, Georgia at the time relevant to this action. On information and belief, she is currently serving as Deputy Chief of Mission in Saudi Arabia and resides in Chantilly, Virginia. Defendant is sued in her official capacity only.
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### IV. FACTUAL ALLEGATIONS

11. Plaintiff entered the United States and applied for asylum in or about 1991.
12. Plaintiff was assigned an Alien Registration Number and issued a Social Security Number.
13. Plaintiff resided in the United States for multiple years and participated in government-administered systems requiring lawful presence, including unemployment insurance benefits in 1997.
14. Plaintiff departed the United States temporarily with intent to return.
15. Plaintiff alleges that he has remained outside the United States involuntarily since that time.
16. On April 2, 2008, an Immigration Judge terminated removal proceedings due to lack of service of the Notice to Appear.
17. The termination did not include any finding of removability or violation of law.
18. In October 2012, Plaintiff applied for a U.S. visa at the U.S. Embassy in Tbilisi.
19. Plaintiff completed all required processing and was interviewed by a consular officer.
20. The application was denied under INA § 214(b).
21. Section 214(b) requires an individualized determination based on the applicant's circumstances.
22. Plaintiff presented material facts relevant to that determination, including:
  - a. prior lawful presence;
  - b. Alien Registration Number;
  - c. Social Security Number and tax participation;
  - d. terminated removal proceedings without adverse findings;
  - e. longstanding ties to the United States.
23. These facts are directly relevant to the statutory presumption applied under § 214(b).
24. The denial did not reflect consideration of these material factors: the warning that even if a review were requested, the result would still be negative was included in the decision Notice itself.

25. The resulting determination lacks a rational connection between the facts presented and the outcome reached. See *SEC v. Chenery Corp.*.
  26. Plaintiff continues to suffer concrete injury from the denial.
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## **V. CLAIMS FOR RELIEF**

### **Count I — Administrative Procedure Act**

27. Plaintiff incorporates paragraphs 1 through 26.
  28. The visa denial constitutes final agency action within the meaning of 5 U.S.C. § 704.
  29. Agency action must not be arbitrary, capricious, or contrary to law. 5 U.S.C. § 706(2)(A).
  30. An agency must examine relevant data and articulate a satisfactory explanation for its action. See *Motor Vehicle Manufacturers Association v. State Farm Mutual Automobile Insurance Co.*.
  31. Defendant failed to consider material facts presented by Plaintiff that are directly relevant to INA § 214(b).
  32. This omission renders the decision arbitrary and capricious.
  33. Plaintiff seeks remand for lawful reconsideration, not a directive to issue a visa.
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### **Count II — Mandamus (28 U.S.C. § 1361)**

34. Plaintiff incorporates paragraphs 1 through 33.
  35. Mandamus is appropriate where a plaintiff demonstrates a clear right to relief, a clear duty to act, and no adequate alternative remedy. See *Allied Chemical Corp. v. Daiflon, Inc.*.
  36. Federal officers have a non-discretionary duty to follow governing statutes and to consider relevant evidence presented.
  37. Plaintiff has a clear right to a decision reflecting consideration of material facts.
  38. Defendant has a clear duty to consider such facts in applying INA § 214(b).
  39. No adequate alternative remedy exists.
  40. Mandamus relief is therefore appropriate to compel compliance with this limited duty.
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### **Count III — Procedural Due Process (Fifth Amendment)**

41. Plaintiff incorporates paragraphs 1 through 40.
42. The Due Process Clause requires that government decision-making not be arbitrary where protected interests are implicated. See *Mathews v. Eldridge*.

43. Plaintiff's prior residence, legal identifiers, and participation in U.S. systems establish substantial connections to the United States.
  44. At minimum, these connections entitle Plaintiff to a procedurally regular determination that considers material facts presented.
  45. The failure to consider such facts deprived Plaintiff of a fundamentally fair process.
  46. Plaintiff does not assert a right to a visa, but to a lawful and non-arbitrary adjudication process.
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## **VI. PRAYER FOR RELIEF**

47. Declare that the denial was arbitrary and capricious to the extent review is available;
  48. Compel Defendant to reconsider Plaintiff's application in accordance with applicable law;
  49. Vacate the denial and remand to the Department of State;
  50. Grant such further relief as the Court deems just and proper.
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## **VII. JURY DEMAND**

51. Plaintiff does not demand a jury trial.

Respectfully submitted,

/s/ Simon Chikhladze  
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